

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appellant: Darius, *et al.* Docket No.: SOL002
Serial No.: 09/593,786 Art Unit: 3694
Filed: June 14, 2000 Examiner: Ella Colbert
For: Mortgage Information Exchange Platform for a Broker to Select a
Mortgage Lender

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

This Appeal Brief is respectfully submitted in connection with the above-identified application in response to the final rejection of claims 1-6 in the Office Action mailed December 23, 2009 (the "Office Action"). A Notice of Appeal was filed on April 23, 2010.

REAL PARTY IN INTEREST (37 C.F.R. 41.37(c)(1)(i))

The present application is assigned to Sollen Technologies LLC, the real party in interest.

RELATED APPEALS AND INTERFERENCES (37 C.F.R. 41.37(c)(1)(ii))

Appellant is not aware of any related appeals or interferences.

STATUS OF CLAIMS (37 C.F.R. 41.37(c)(1)(iii))

Claims 1-6 stand finally rejected. No claims have been allowed. Therefore, claims 1-6 are the subject of this appeal. The claims on appeal are reproduced in the Claims Appendix.

STATUS OF AMENDMENTS (37 C.F.R. 41.37(c)(1)(iv))

No response under 37 C.F.R. § 1.116 was filed. A Pre-Appeal Brief Request for Review was filed on April 23, 2010, but did not contain any amendments to the claims.

SUMMARY OF CLAIMED SUBJECT MATTER (37 C.F.R. 41.37(c)(1)(v))

Claim 1 is the only independent claim. The invention of claim 1 relates to a method operative on a web server to facilitate a web-based information exchange between a broker and a set of wholesale lenders.

The method comprises exposing to the broker at least one generic mortgage lender profile over said web-based information exchange, the at least one generic mortgage lender profile simultaneously exposing generic mortgage profile information for a plurality of different specific wholesale lenders. *See, e.g.*, paragraphs [0008] and [0023]; Figures 3 and 4.

The method further comprises applying a given generic mortgage lender profile to given data to identify a set of one or more specific wholesale lenders who meet criteria specified in the given data, responsive to entry by the broker of the given data. *See, e.g.*, paragraphs [0008], [0023] and [0025]; Figures 3 and 4.

Finally, the method comprises exposing to the broker a specific mortgage lender profile instantiated with a set of unique lender characteristics for use by the broker in completing a mortgage transaction over said web-based information exchange, responsive to selection by the broker of one of the specific wholesale lenders. *See, e.g.*, paragraphs [0008], [0023] and [0028]; Figures 3, 5 and 6.

GROUND OF REJECTION TO BE REVIEWED ON APPEAL (37 C.F.R. 41.37(c)(1)(vi))

1. Whether claims 1-6 comply with the written description requirement under 35 U.S.C. § 112, first paragraph?
2. Whether claims 1-6 fail under 35 U.S.C. § 112, second paragraph to particularly point out and distinctly claim the subject matter which Applicants regard as the invention?
3. Whether claim 1 is anticipated under 35 U.S.C. § 102(a) by U.S. Patent No. 6,233,566 (“Levine”)?
4. Whether claims 2-6 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,233,566 (“Levine”) in view of U.S. Patent Publication No. 2004/0002915 (“McDonald”)?

ARGUMENT (37 C.F.R. 41.37(c)(1)(vii))

1. Whether claims 1-6 comply with the written description requirement under 35 U.S.C. § 112, first paragraph?

Claims 1-6 fully comply with the written description requirement under 35 U.S.C. § 112, first paragraph. Examiner asserted two bases for the final rejection of claims 1 – 6: (A) Examiner first asserted that the specification does not support the claim element of “simultaneously exposing” generic mortgage profile information, asserting that “exposing” generic mortgage profile information is taught, but not “simultaneously exposing” such information; and (B) secondly, Examiner asserted that the specification does not support “a specific mortgage lender profile being instantiated with a set of unique lender characteristics for use . . . in completing the mortgage transaction,” rather, Examiner asserted, the specification only

supports “generic mortgage lender profiles,” but does not “specific mortgage lender with a unique set of characteristics.” *See* Office Action at pp. 2-3. Each of these bases is traversed below.

A. The specification fully supports the claim element “simultaneously exposing generic mortgage profile information.”

Paragraph [0023] teaches “A generic mortgage lender profile, for example, may include the basic details associated with a 30 year fixed mortgage program, a 15 year fixed mortgage program, a 7.5 year balloon mortgage program, or the like.” Paragraph [0025] provides further detail regarding the generic mortgage profile information, by teaching “the VGWL [Virtual Generic Wholesale Lender object] provides a level of abstraction to allow the broker to more easily make preliminary decisions such as the type of loan (fixed vs. adjustable rate, rate, loan-to-value etc.).” These are examples of “generic mortgage profile information” that would be clearly understood by those skilled in the art and that fully comply with the written description requirement of 35 U.S.C. § 112, first paragraph.

The specification fully supports the claim element “simultaneously exposing” generic profile information. Paragraph [0023] teaches that, “the VGWL object executes a pricing engine that exposes to the broker a set of one or more generic mortgage lender profiles from which the broker may select” (emphasis added). These generic mortgage lender profiles are illustrated in Figure 3 as elements 306. The specification teaches that these profiles 306 are exposed to the broker “simultaneously” by teaching that “the generic mortgage lender profile is executed against the data (as a filter) to identify a set of one or more specific wholesale lenders who meet criteria specified in the entered data. The broker may then select a specific mortgage lender from the list” (emphasis added). Self-evidently, in order to “select” a specific profile “from the list” of

“one or more” lender profiles, the lender profiles are “simultaneously exposed” to the broker. Again, this is illustrated in Figure 3 by the parallel arrows between wholesale lender profiles 306 and Virtual Quasi-Generic Wholesale Lender object 302 (which provides the display to broker 304, illustrated by the parallel lines between VGWL 302 and mortgage broker 304).

Further support for “simultaneously exposing” generic mortgage profile information is found in Paragraph [0008], which teaches, “Initially, a rating engine in the platform exposes to the broker a set of one or more generic mortgage lender profiles” (emphasis added). Again, selecting from “a set” requires that the various profiles be exposed simultaneously in order to allow the broker to make the selection. For at least these reasons, “simultaneously exposing” is fully supported in a manner that complies with the written description requirement of 35 U.S.C. § 112, first paragraph.

B. The specification fully supports “a specific mortgage lender profile being instantiated with a set of unique lender characteristics for use . . . in completing the mortgage transaction.”

The limitation of “a specific mortgage lender profile being instantiated with a set of unique lender characteristics for use . . . in completing the mortgage transaction” is also supported. Paragraph [0023] teaches “When the broker makes a selection, the VGWL is instantiated with appropriate data to display lender-specific implementation details.” Paragraph [0026] provides further support for “unique lender characteristics” by reciting “the VGWL-engine presents the unique lender characteristics . . . such as rate sheets, brochures, eligibility matrices” etc. These are terms and details that would be readily understood by anyone skilled in the art. Figure 5 illustrates just one example of specific mortgage profile being instantiated with a set of unique lender characteristics. Contrary to the generic mortgage profile information being

displayed in Figure 3, Figure 5 illustrates a specific mortgage profile – in this case the Good Loans, Inc. profile – has been instantiated and displayed to the broker.

Paragraph [0008] provides even further support for this claim element. “The broker then makes a selection of one or more candidate wholesale lenders listed. In response, the rating engine is instantiated with a set of unique lender characteristics for use by the broker in completing an online mortgage transaction.”

Contrary to Examiner’s assertion that the specification mentions only “generic mortgage lender profiles,” and “leaves the remainder to one’s imagination,” at least Paragraphs [008], [0023], and [0026], and Figure 5 provide a fully supporting written description of the invention and claims 1 – 6 meet the requirements of 35 U.S.C. § 112, first paragraph.

2. Whether claims 1-6 fail under 35 U.S.C. § 112, second paragraph to particularly point out and distinctly claim the subject matter which Applicants regard as the invention?

Claims 1 – 6 were also rejected under 35 U.S.C. § 112, second paragraph. Examiner asserted three bases for this rejection: (A) Examiner asserted that it is “unclear and indefinite as to what Applicants mean by ‘exposing to the broker . . . the at least one generic mortgage lender profile simultaneously exposing . . .’” (B) Examiner also asserted that the claim term “applying a given generic mortgage lender profile to given data . . . who meet criteria specified in the given data, responsive to entry by the broker of the given data” is vague and indefinite because, “It cannot be determined where the ‘given data’ is coming from;” and (C) finally, Examiner asserted that the claim term “eligibility matrix” was not defined. *See* Office Action at pp. 3-4. Each of these bases is responded to in turn below.

A. The claim term “exposing to the broker . . . the at least one generic mortgage lender profile simultaneously exposing . . .” distinctly claims the invention.

Examiner excised a snippet of claim language, divorced from context of the actual claim, and has argued it does not make sense. When the entire claim element is read, however, the meaning is clear. In full, the claim element recites “exposing to the broker a set of at least one generic mortgage lender profile over said web-based information exchange, the at least one generic mortgage lender profile simultaneously exposing generic mortgage lender profile information for a plurality of different specific wholesale lenders” (emphasis added). In its entirety, the claim limitation is clear that (i) at least one generic mortgage lender profile is being exposed to the broker, and (ii) the at least one generic mortgage lender profile exposes [to the broker] information for a plurality of different specific wholesale lenders. Stated another way, the generic mortgage lender profile provides (simultaneously exposes) information for different specific lenders to the broker. Examiner’s rejection, which states, “Do Applicants’ mean ‘exposing to the broker at least one generic mortgage lender profile and simultaneously exposing . . .’?” demonstrates that Examiner understands the claim as written. Examiner has failed to identify, and Applicants are unaware of, any other interpretation of this claim element (when given its broadest reasonable interpretation consistent with the specification).

B. The claim term “applying a given generic mortgage lender profile to given data . . . who meet criteria specified in the given data, responsive to entry by the broker of the given data” distinctly claims the invention.

Examiner asserted that the claim term “applying a given generic mortgage lender profile to given data . . . who meet criteria specified in the given data, responsive to entry by the broker of the given data” is indefinite. Examiner argued that “It cannot be determined where the ‘given data’ is coming from. Do Applicants mean the ‘given data’ is coming from the generic profile information?” See Office Action at pp. 3-4. The answer to Examiner’s question rests in claim 1

itself. The claim states, “responsive to entry by the broker of given data.” Hence, to answer Examiner’s question of “where the given data is coming from,” one need only look to the claim itself. The claim unambiguously identifies that the data is coming from an “entry by the broker.” As such, the claim element is clear and definite.

C. The term “eligibility matrix” is a well understood term of art.

Examiner also asserted that the claim term “eligibility matrix” was not defined. The term eligibility matrix is a well known term readily understood by those skilled in the art. As noted in Paragraph [0026] of Applicants’ Specification, terms such as “rate sheets, brochures, eligibility matrices, lock, and registration sheets” represent known items of the type “normally distributed to brokers.” Because eligibility matrices is a common and well known term in the relevant art, there is no need for a definition in the Specification and claim 3 is clear and definite.

3. *Whether claim 1 is anticipated under 35 U.S.C. § 102(a) by U.S. Patent No. 6,233,566 (“Levine”)?*

Claim 1 was rejected as anticipated by U. S. Patent No. 6,233,566 to Levine et al. (“Levine”). Claim 1 is novel over Levine for at least the following reasons.

A. Levine fails to teach “information exchange between a broker and lenders.”

Claim 1 recites, “information exchange between a broker and a set of wholesale lenders” (emphasis added). An example of information exchange between a broker and a set of wholesale lenders is provided in Figure 1 of the present application, reproduced below for the Board’s convenience. Note that the borrower is not a party to the information exchange.

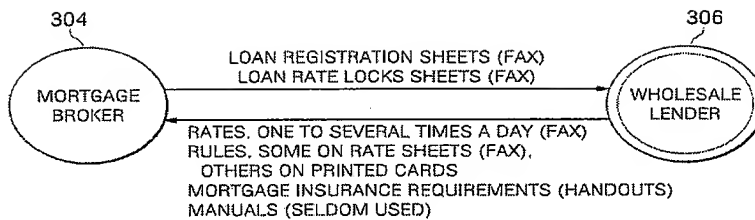
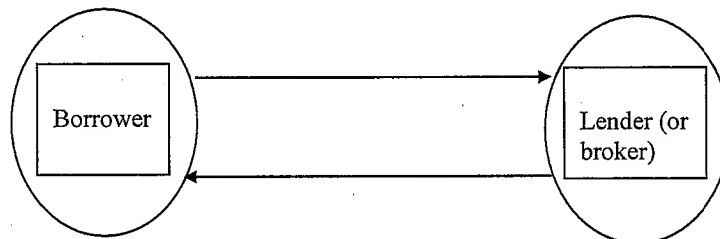


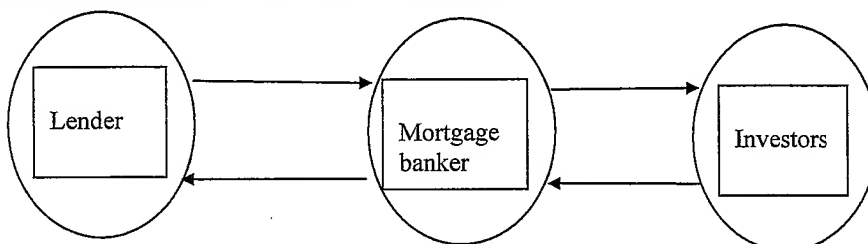
FIG. 1

Examiner has asserted that Levine discloses, at col. 3, lines 7 – 49, “information exchange between a broker and a set of wholesale lenders.” This is incorrect. Column 3 of Levine discusses a “loan origination phase” wherein “the potential borrower contacts the lender or a broker working with a lender” (Col. 3, lines 7 – 11). This can be illustrated as below:



Note that the only information exchange disclosed in Col. 3, lines 7 – 28, of Levine (wherein the loan origination phase is discussed) is between a borrower and a lender or broker. Those are completely different communications than the information exchange between a broker and wholesale lenders recited in claim 1. In fact, Levine nowhere discloses any information exchange between a broker and wholesale lenders during the loan origination phase, as required by claim 1.

Column 3 of Levine also discusses a “loan wholesaling phase” at lines 29 – 49. The only information exchange disclosed in this section of the reference, however, is between a lender and a mortgage banker. This can be illustrated as follows:



Note that the mortgage broker is not even a part of this transaction. Again, note that Levine nowhere discloses information exchange between a broker and wholesale lenders in this section of the reference.

Finally, Levine discloses communications between a lender, a mortgage banker and investors for pooling loans at col. 3, lines 29 – 49 (also illustrated above). This teaching is simply inapposite to the claimed information exchange between a broker and wholesale lenders, as recited by claim 1. This portion of Levine addresses a phase in the loan life cycle wherein loans are simply being pooled for sale to investors, but does not disclose the claimed information exchange of claim 1. Again, there is no mention of the mortgage broker in this portion of Levine.

B. Levine fails to disclose exposing to a broker generic lender profiles.

Examiner has also asserted that several sections in Levine address exposing one or more generic lender profiles. Examiner has cited to Col. 21, lines 41 – 48 and lines 49 – 59 for support. This section of Levine merely addresses loan wholesaling wherein lenders can maintain a “profile” of contact information and “a list of all loans or loan pools ... for sale in the system” (emphasis added). Contact information and a listing of loans for sale do not constitute a generic lender profile, however. By way of example, and not by limitation, paragraph [0023] teaches “a generic mortgage lender profile, for example, may include the basic details associated with a 30 year fixed mortgage program, a 15 year fixed mortgage program, a 7.5 year balloon mortgage program, or the like.” Furthermore, paragraph [0025] provides further detail regarding the generic mortgage profile information, by teaching “the VGWL [Virtual Generic Wholesale Lender object] provides a level of abstraction to allow the broker to more easily make

preliminary decisions such as the type of loan (fixed vs. adjustable rate, rate, loan-to-value etc.).” Note that this generic profile is not specific to any one lender or loan. By contrast, the portion of Levine cited to by Examiner relates to specific, actual loans that a specific lender has listed for sale. Applicants are unaware of any teaching in Levine that provides for a generic lender profile (as opposed to, at best, specific lender information).

Furthermore, this section of Levine provides no disclosure of exposing to a broker a “generic lender profile” that simultaneously exposes “generic mortgage profile information for a plurality of different specific wholesale lenders” as required by claim 1. This is for the simple reason that this disclosure in Levine is frankly unrelated to the exchange of information between a broker and a set of wholesale lenders. By contrast, Levine is disclosing communications between a lender and investors in a pool of loans. There is no teaching in Levine that the contact information and list of loans for sale is ever exposed to a broker.

C. Levine fails to disclose “applying a given generic mortgage lender profile to given data to identify a set of one or more specific wholesale lenders who meet criteria specified in the given data, responsive to entry by the broker of the given data.”

Claim 1 also recites “applying a given generic mortgage lender profile to given data to identify a set of one or more specific wholesale lenders who meet criteria specified in the given data, responsive to entry by the broker of the given data.” Examiner has cited to Col. 3, line 50 through Col. 4, line 32 of Levine as disclosing this claim element.

However, once again, Examiner has pointed to a section of Levine that relates to “a loan wholesaling phase” (Levine, Col. 3, lines 29 – 30) and a “securitization phase” of a loan (Levine, Col. 3, line 66 through Col. 4, line 1). Not surprisingly (because these phases have nothing to do with communications between a mortgage broker and lenders), the cited portion of Levine

nowhere even mentions a “broker.” Examiner has completely failed to address how this portion of Levine can disclose “responsive to entry by the broker of the given data” when this portion (a) fails to disclose a broker and (b) fails to disclose entry of data by a broker. Applicants are furthermore unaware of any other portion of Levine that provides this teaching.

D. Levine fails to disclose “exposing to the broker a specific mortgage lender profile instantiated with a set of unique lender characteristics . . . responsive to selection by the broker of one of the specific wholesale lenders.”

As addressed above, Levine fails to teach or even suggest the use of generic mortgage lender profiles. As such, there is no teaching or suggestion of instantiating a specific mortgage lender profile in response to a broker selecting a specific lender from the generic profile. Nonetheless, Examiner has pointed to three sections of Levine for purported support of the rejection, each of which is addressed below.

Examiner pointed to Col. 8, lines 18 – 65 as teaching this claim element. A review of the cited portion reveals, however, that this section merely describes in generic terms a centralized exchange system for exchanging information, but nowhere addresses specific lender profiles having been instantiated with unique lender characteristics in response to a broker selection. At best, this section merely states that “each subscriber . . . supplies the system with information about its trade activities with each of the other subscribers on the system” at Col. 8, lines 60-65. This is not an anticipatory disclosure, however.

Examiner also pointed to Col. 9, lines 21-52 for support. This portion of Levine is directed to “trading of loans, and, thus, relates to the valuations of the loans and loan pools.” As Levine recognized, trading of loans occurs between a lender and mortgage bankers or investors (Levine at Col. 3, lines 29 – 49). Nothing in Levine teaches, or even suggests, that a broker is

involved in the trading of loans (in fact, the portion of Levine cited to by Examiner nowhere mentions a “broker”) and hence this portion of Levine cannot possibly anticipate “exposing to the broker a specific mortgage lender profile instantiated with a set of unique lender characteristics . . . responsive to selection by the broker of one of the specific wholesale lenders” as required by claim 1.

Finally, Examiner also cited to Col. 10, line 54 through Col. 12, line 32 of Levine. Applicants have carefully reviewed this portion of Levine and find no teaching of the above cited elements of claim 1. In fact, the closest teaching in this portion of Levine – describing a loan origination subsystem 240 – discloses a system wherein communications and selection by the broker are conspicuously absent. Col. 11, lines 25 – 54 describe the loan origination phase. As described by Levine, however, “In an embodiment of the present invention, a consumer (i.e. a borrower) would call into the subsystem 240 via the public service telephone network (PSTN) to apply for a loan. A customer service agent, working for the loan originating entity would gather the information using a GUI on the interface workstation 24 customer service agent, working for the loan originating entity¹ would gather the information using a GUI on the interface workstation 243” (emphasis added). In other words, the portion of Levine relied upon by Examiner discloses a system wherein the borrower contacts the lender directly, completely bypassing the mortgage broker. Examiner has failed to identify and Applicant is aware of any other teaching in Levine wherein the broker is exposed to “a specific mortgage lender profile instantiated with a set of unique lender characteristics” in response to “selection by the broker of

¹ Levine clearly teaches that the “Mortgage Bank” is the loan originating entity (See Table 1 at Col. 8), and not the broker.

one of the specific wholesale lenders” as required by claim 1 (emphasis added). For at least these reasons, claim 1 is patentably distinct over Levine.

4. *Whether claims 2-6 are unpatentable under 35 U.S.C. § 103(a) over U.S. Patent No. 6,233,566 (“Levine”) in view of U.S. Patent Publication No. 2004/0002915 (“McDonald”)?*

Claims 2-6 were rejected under 35 U.S.C. § 103(a) as unpatentable over Levine in view of U.S. Patent Publication No. 2004/0002915 to McDonald, *et al.* (hereinafter “McDonald”).

Claims 2- 6 depend from claim 1 and by reason of the grounds given above, as well as for their further defining limitations, are patentably distinct over Levine. McDonald overcomes none of the above described deficiencies in Levine. As such, claims 2-6 are patentably distinct over Levine and McDonald, whether alone or in combination.

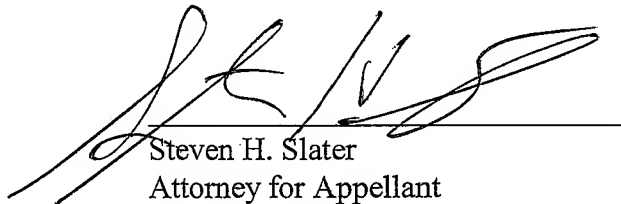
CONCLUSION

For the foregoing reasons, Appellant respectfully submits that the final rejection of claims 1-6 is improper and respectfully requests that the Board of Patent Appeals and Interferences so find and reverse these rejections.

A Petition for A Two Month Extension of Time, as well as fees for filing same, are being filed and submitted concurrently with this Appeal Brief. If additional Extensions of Time under 37 C.F.R. § 1.136 are necessary, Appellant hereby requests such Extension of Time. The Commissioner is hereby authorized to charge the required \$270.00 Appeal Brief fee under 37 CFR § 41.20(b)(2). Please charge any other required fees, or credit any overpayments Deposit Account No. 50-1065.

Respectfully submitted,

18 AUG 2010
Date


Steven H. Slater
Attorney for Appellant
Reg. No. 35,361

SLATER & MATSIL, L.L.P.
17950 Preston Rd., Suite 1000
Dallas, Texas 75252
Tel.: 972-732-1001
Fax: 972-732-9218

CLAIMS APPENDIX

1. A method operative on a web server to facilitate a web-based information exchange between a broker and a set of wholesale lenders, comprising:

exposing to the broker at least one generic mortgage lender profile over said web-based information exchange, the at least one generic mortgage lender profile simultaneously exposing generic mortgage profile information for a plurality of different specific wholesale lenders;

applying a given generic mortgage lender profile to given data to identify a set of one or more specific wholesale lenders who meet criteria specified in the given data, responsive to entry by the broker of the given data; and

exposing to the broker a specific mortgage lender profile instantiated with a set of unique lender characteristics for use by the broker in completing a mortgage transaction over said web-based information exchange, responsive to selection by the broker of one of the specific wholesale lenders.

2. The method as described in Claim 1 wherein the set of unique lender characteristics includes a rate sheet.

3. The method as described in Claim 1 wherein the set of unique lender characteristics includes an eligibility matrix.

4. The method as described in Claim 1 wherein the set of unique lender characteristics includes a lock sheet.

5. The method as described in Claim 1 further including the step of displaying to the broker mortgage rates and prices.

6. The method as described in Claim 1 further including the step of having the broker lock a loan online.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None